MT LEGISLATIVE HISTORY

Chapter 461 1989

Bill H _____ (S) 452 Original bill & hist. ✓C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) Mar 22	✓C	Hearing Date(s) Feb 17	✓C
_____	___C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out 3/22	✓C	2/17	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

SENATE BILL NO. 452

INTRODUCED BY GAGE

BY REQUEST OF THE BOARD OF CRIME CONTROL

IN THE SENATE

FEBRUARY 16, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 17, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1989	PRINTING REPORT.
	SECOND READING, DO PASS.
	ENGROSSING REPORT.
FEBRUARY 21, 1989	THIRD READING, PASSED. AYES, 49; NOES, 1.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 21, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 28, 1989	FIRST READING.
MARCH 22, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 28, 1989	SECOND READING, CONCURRED IN.
MARCH 29, 1989	THIRD READING, CONCURRED IN. AYES, 96; NOES, 1.

RETURNED TO SENATE.

IN THE SENATE

MARCH 29, 1989 RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Senate BILL NO. 452

INTRODUCED BY Stapleton

BY REQUEST OF THE BOARD OF CRIME CONTROL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO JAILS, JAIL ADMINISTRATORS, AND INMATES; REDEFINING JAILS AS DETENTION CENTERS; DEFINING TERMS; PROVIDING FOR THE ADMINISTRATION OF DETENTION CENTERS; PROVIDING FOR MULTIJURISDICTIONAL DETENTION CENTERS; REGULATING DETENTION OF JUVENILES IN DETENTION CENTERS; REQUIRING INMATES TO PAY CONFINEMENT COSTS; ALLOWING THE TEMPORARY RELEASE OF INMATES; CREATING CRIMINAL OFFENSES RELATED TO THE TREATMENT OF INMATES; AMENDING SECTIONS 7-32-2121, 7-32-2123, 7-32-2127, 7-32-2128, 7-32-2132, 7-32-2143, 7-32-2201 THROUGH 7-32-2205, 7-32-2207, 7-32-2208, 7-32-2211, 7-32-2222, 7-32-2231 THROUGH 7-32-2234, AND 7-32-4201, MCA; AND REPEALING SECTIONS 7-32-2206, 7-32-2209, 7-32-2210, 7-32-2212, 7-32-2213, 7-32-2221, 7-32-2223, 7-32-4202, AND 7-32-4203, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in this part, the following definitions apply:

(1) "Detention center" means a facility established and maintained by an appropriate entity for the purpose of confining arrested persons or persons sentenced to the detention center.

(2) "Detention center administrator" means the sheriff, chief of police, administrator, superintendent, director, or other individual serving as the chief executive officer of a detention center.

(3) "Detention center staff" means custodial personnel whose duties include ongoing supervision of the inmates in a detention center.

(4) "Inmate" means a person who is confined in a detention center.

(5) "Local government" means a city, town, county, or consolidated city-county government.

(6) "Multijurisdictional detention center" means a detention center established and maintained by two or more local governments for the confinement of persons arrested or sentenced to confinement or a local government detention center contracting to confine persons arrested or sentenced in other local governments.

(7) "Private detention center" means a detention center owned by private industry and leased to or operated under a contract with a local government.

NEW SECTION. **Section 2. Use of detention center -- payment of costs.** (1) Local government, state, and federal law enforcement and correctional agencies may use any

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detention center for the confinement of arrested persons and the punishment of offenders, under conditions imposed by law and with the consent of the governing body responsible for the detention center.

(2) If a person is committed to a detention center by a government unit not responsible for the operation of the detention center, the committing government unit shall pay the costs of holding the person in confinement as agreed upon by the government unit and the detention center, except that if a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the costs must be paid by the county. Payments must be made to the government unit responsible for the detention center or to the administrator operating a private detention center under an agreement provided for in 7-32-2201, upon presentation of a claim to the committing government unit.

NEW SECTION. **Section 3. Contracts for detention center services.** (1) Contracts concerning detention center services and facilities between state or local government units, the state of Montana, or the federal government must be made pursuant to the Interlocal Cooperation Act, Title 7, chapter 11, part 1.

(2) A government unit responsible for a detention center may contract with a government unit of another state for the confinement of lawfully committed inmates in a detention center located in either jurisdiction.

NEW SECTION. **Section 4. Juvenile detention center standards.** (1) Juveniles may be held in a detention center only in accordance with 41-5-301 through 41-5-309.

(2) Detention centers that hold juveniles must comply with the standards for the detention of juveniles promulgated by the department of family services.

NEW SECTION. **Section 5. Payment of confinement costs by inmate.** An inmate found by the sentencing court to have the ability to pay is liable for the costs of his confinement in a detention center. The rate at which the inmate must pay the costs must be established at the sentencing hearing.

NEW SECTION. **Section 6. Temporary release from detention center.** A detention center inmate may be granted, by court order, the privilege of leaving the detention center during necessary and reasonable hours for any of the following purposes:

(1) seeking employment;

(2) working at his employment;

(3) conducting his own business or self-employment;

(4) attending to the needs of his family;

(5) attending an educational institution; or

(6) obtaining medical treatment.

NEW SECTION. **Section 7. Annoyance of inmate prohibited -- penalty.** (1) The detention center administrator or staff member in charge of an inmate must use necessary and proper means to protect an inmate from purposeful or knowing insults and annoyance by others and to prevent others from communicating with the inmate while the inmate is at or is going to or returning from employment.

(2) A person persisting in purposefully or knowingly insulting, annoying, or communicating with an inmate after being told by the detention center administrator or staff member to desist commits the offense of inmate annoyance.

(3) A person convicted of the offense of inmate annoyance shall be fined an amount not to exceed $500.

NEW SECTION. **Section 8. Inmate endangerment -- penalty.** (1) A detention center administrator or staff member commits the offense of inmate endangerment if he knowingly:

(a) places or keeps a juvenile with adult inmates;

(b) uses corporal punishment against an inmate; or

(c) uses physical force against an inmate, except as necessary for:

(i) self-defense;

(ii) control of inmates;

(iii) protection of another person from imminent physical attack; or

(iv) prevention of riot or escape.

(2) A person who commits the offense of inmate endangerment shall be fined an amount not to exceed $500.

Section 9. Section 7-32-2121, MCA, is amended to read:

"**7-32-2121. Duties of sheriff.** The sheriff must:

(1) preserve the peace;

(2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or have committed a public offense;

(3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections which may come to his knowledge;

(4) perform the duties of a humane officer within the county with reference to the protection of dumb animals;

(5) attend all courts, except municipal, justices', and city courts, at their respective terms or sessions held within the county and obey their lawful orders and directions;

(6) command the aid of as many inhabitants of the county as are necessary in the execution of the sheriff's duties;

(7) take charge of and keep the ~~county jail~~ detention center and the ~~prisoners~~ inmates therein, unless the ~~jail~~

detention center is operated by a private party under an agreement entered into under 7-32-2201 or by a ~~jail~~ detention center administrator or by another local government;

(8) endorse upon all notices and process the year, month, day, hour, and minute of reception and issue therefor to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the paper, and the time of reception;

(9) serve all process or notices in the manner prescribed by law;

(10) certify in writing upon the process or notices the manner and time of service or, if he fails to make service, the reasons of this failure, and return the papers without delay;

(11) take charge of and supervise search and rescue units and their officers whenever search and rescue units are called into service; and

(12) perform such other duties as are required by law."

Section 10. Section 7-32-2123, MCA, is amended to read:

"**7-32-2123. Appointment of ~~jailer~~ detention center staff.** A sheriff who operates a ~~county--jail--pursuant--to~~ detention center under 7-32-2121 may appoint deputy sheriffs or nonsworn individuals as ~~jailers~~ detention center staff. A

nonsworn individual appointed ~~as-a-jailer~~ to the detention center staff need not receive the same salary as a deputy sheriff."

Section 11. Section 7-32-2127, MCA, is amended to read:

"**7-32-2127. Prosecution of action involving county law enforcement personnel brought against executor or administrator.** Any action for default or misconduct of any sheriff, his undersheriff, his ~~jailer~~ detention center staff, or any of his deputies may be prosecuted against the executors or administrators of such sheriff."

Section 12. Section 7-32-2128, MCA, is amended to read:

"**7-32-2128. False claims by detention center administrator or sheriff.** (1) Every ~~sheriff~~ detention center administrator who falsely represents to the ~~board-of--county commissioners~~ governing body of a local government the actual expenses of boarding ~~prisoners~~ detention center inmates, ~~for~~ furnishing food and supplies ~~therefor~~, or ~~for any--service--rendered--in--connection--therewith~~ providing services or who presents to ~~said-board~~ the governing body false items in a claim or false vouchers or, if he is not a private detention center administrator, makes any profit ~~whatever-out-of~~ from the ~~board--or~~ keeping of ~~prisoners~~ inmates in his custody and every person who gives a false

item or false voucher to be used by ~~such--sheriff~~ the detention center administrator in any claim against the ~~county-before-such-board~~ local government is guilty of a misdemeanor.

(2) Every sheriff who falsely represents to the board of county commissioners or attorney general his actual traveling expenses in the performance of any official duty or causes to be paid to him from the state or any county treasury a sum exceeding his actual expenses in the performance of ~~such~~ his duty is guilty of a misdemeanor."

Section 13. Section 7-32-2132, MCA, is amended to read:

"**7-32-2132. Liability for escape in civil actions.** (1) A ~~sheriff,--jail~~ detention center administrator~~,-or-private party-jailer~~ who fails to prevent the escape or rescue of a person in his custody arrested in a civil action without the consent or connivance of the party in whose behalf the arrest or imprisonment was made is liable as follows:

(a) When the arrest is upon an order to hold for bail or upon a surrender in exoneration of bail before judgment, the ~~sheriff,-jail~~ detention center administrator~~,-or-private party-jailer~~ is liable to the plaintiff for the bail.

(b) When the arrest is on an execution or commitment to enforce the payment of money, the ~~sheriff,-jail~~ detention center administrator~~,-or-private-party-jailer~~ is liable for

the amount expressed in the execution or commitment.

(c) When the arrest is on an execution or commitment other than to enforce the payment of money, the ~~sheriff,-jail~~ detention center administrator~~,-or-private-party-jailer~~ is liable for the actual damages sustained.

(2) Upon being sued for damages for an escape or rescue of a person in his custody, the ~~sheriff,-jail~~ detention center administrator~~,-or-private-party-jailer~~ may introduce evidence in mitigation or exculpation.

(3) An action may not be maintained against a ~~sheriff,-jail~~ detention center administrator~~,-or-private-party-jailer~~ for a rescue or for an escape of a person arrested upon an execution or commitment if, after his rescue or escape and before the commencement of the action, the ~~prisoner~~ inmate returns to the ~~jail~~ detention center or is retaken by the ~~sheriff,--jail~~ detention center administrator~~,-or-private party-jailer~~."

Section 14. Section 7-32-2143, MCA, is amended to read:

"**7-32-2143. Mileage and expenses of sheriff in general.** (1) Except as provided in 7-32-2144 and 7-32-2145, in addition to the fees specified in 7-32-2141 and 7-32-2142, the sheriff shall receive for each mile actually traveled in serving any writ, process, order, or other paper, including a warrant of arrest, or in conveying a

person under arrest before a magistrate or to ~~jail~~ a detention center only his actual expenses when such travel is made by railroad or airline; and when travel is other than by railroad or airline, he shall receive a mileage allowance as provided in 2-18-503 for each mile actually traveled by him both going and returning and the actual expenses incurred by him in conveying a person under arrest before a magistrate or to ~~jail~~ a detention center. He shall receive the same mileage and his actual expenses for the person conveyed or transported under order of court within the county, the same to be in full payment for transporting and feeding such persons during such transportation. Whenever more than one person is transported by the sheriff or when one or more papers are served on the same trip made for the transportation of one or more ~~prisoners~~ inmates, only one mileage may be charged.

(2) No mileage may be paid by the county to sheriffs whose vehicles are provided and maintained by the county. All mileage paid to sheriffs whose vehicles are provided and maintained by the county shall be paid over to the county treasurer and deposited in the county general fund.

(3) (a) No mileage may be allowed on an attachment, order of arrest, order for delivery of personal property, or any other order, notice, or paper when the same accompanies the summons and the service thereof may be made at the time

of the service of the summons, except for the distance actually traveled beyond that required to serve the summons. When two or more papers are served on the same person at the same time or when any paper or papers are served on more than one person on the same trip, only one mileage may be allowed or charged; and in the service of subpoenas, only one mileage may be charged when the persons named therein live in the same place or in the same direction; but mileage may be charged for the longest distance actually traveled. Any writ, order, or other paper for service must be received at any place in the county where a sheriff or a deputy is found, and mileage must be computed only from such place to the place of service. When two or more officers travel in the same automobile in the discharge of any duty, only one mileage may be allowed.

(b) When any sheriff or constable serves more than one process in the same cause, not requiring more than one journey from his office, he shall receive mileage only for the more distant service, and no mileage in any case may be allowed for less than 1 mile actually traveled.

(4) In lieu of charging mileage for the service of items of a civil nature as provided in subsections (1) and (3), a sheriff may charge $1 for the service of each item of a civil nature that requires a return or proof of service."

Section 15. Section 7-32-2201, MCA, is amended to

read:

"7-32-2201. ~~County----jail----required~~ Establishing detention center -- detention center contract -- regional detention center. For the confinement of lawfully committed persons, the governing body of a county may participate in or undertake one or more of the following:

(1) A ~~jail shall~~ detention center may be built or provided and kept in good repair at the expense of the county in each county, except that whenever in the discretion of the ~~commissioners~~ governing body of two or more ~~counties~~ local governments it is necessary or desirable to build, provide, or utilize a ~~common----jail~~ multijurisdictional detention center, they may do so in any ~~city--or--town--located--within--one~~ of the ~~counties---so~~ jurisdictions concerned. ~~Such----common----jail~~ The multijurisdictional detention center shall be built or provided and kept in good repair at the expense of the ~~counties~~ local governments concerned on a basis as the ~~commissioners--of-the-counties-shall~~ governing bodies agree.

(2) A county~~,~~ or two or more ~~counties~~ local governments acting together~~,~~ may provide for the ~~jail required~~ detention center allowed by subsection (1) by:

(a) establishing in the county government the position of ~~jail~~ detention center administrator and~~,--with---the sheriff's-concurrence,~~ hiring a person, who is answerable to

the governing body of the county, to fill the position or appointing the sheriff as detention center administrator; or

(b) entering into an agreement~~,-with--the--concurrence of--the--sheriffs--of--all--participating--counties,~~ with a private party under which the private party will provide, maintain, or operate the ~~jail~~ detention center.

(3) The ~~common-jails~~ detention centers in ~~the-several counties-of~~ this state are kept by the ~~sheriffs,--jail~~ detention center administrators~~,-or-private-parties-agreeing to-act-as-jailers~~ of the ~~counties~~ local governments in which they are ~~respectively~~ situated. In the case of ~~more-than-one county-utilizing~~ a ~~common-jail~~ multijurisdictional detention center as provided in subsection (1), ~~such--jail~~ the detention center shall be kept by the ~~sheriffs--of--the counties~~ local governments utilizing the ~~common--jail~~ detention center on a basis as the ~~sheriffs-shall~~ governing bodies agree~~,-by-a-jail-administrator-hired-by-the-county-in which--the--jail-is-situated,-or-by-a-private-party-agreeing to-act-as-the-jailer~~.

(4) The board of county commissioners has jurisdiction and power, under such limitations and restrictions as are prescribed by law, to cause a ~~jail~~ detention center to be erected, furnished, ~~and~~ maintained, and operated. The costs must be paid for out of the county treasury."

Section 16. Section 7-32-2202, MCA, is amended to

read:

"7-32-2202. Use of ~~jail~~ detention center in contiguous county. (1) When there is no ~~jail~~ detention center in the county or when the ~~jail~~ detention center becomes unfit or unsafe for the confinement of ~~prisoners~~ inmates, the district judge may, by written appointment filed with the clerk, designate the ~~jail~~ detention center of a contiguous county for the confinement of the ~~prisoners~~ inmates of his county ~~for any of them~~ and may at any time modify or annul the appointment.

(2) A copy of the appointment, certified by the clerk, must be served on the ~~sheriff~~ detention center administrator of each county involved, ~~or the keeper of the designated jail if the keeper is not the sheriff~~, who must receive into his ~~jail~~ detention center all ~~prisoners~~ inmates authorized to be confined therein pursuant to this section and who is responsible for the safekeeping of the persons so committed in the same manner and to the same extent as if he were the ~~sheriff, jail~~ detention center administrator~~, or private party jailer~~ of the county for whose use his ~~jail~~ detention center is designated. With respect to the persons so committed, he is deemed the ~~sheriff, jail~~ detention center administrator~~, or private party jailer~~ of the county from which they were removed.

(3) When a ~~jail~~ detention center is erected in the

county for the use of which the designation was made or its ~~jail~~ detention center is rendered fit and safe for the confinement of ~~prisoners~~ inmates, the district judge of that county must, by a written revocation filed with the clerk, declare that the necessity for the designation has ceased and that it is revoked.

(4) The clerk must immediately serve a copy of the revocation upon the ~~sheriff~~ detention center administrator of each county ~~or the keeper of the jail in each county if the keeper is not the sheriff~~ involved. The ~~keeper of the jail~~ detention center administrator in the designated county must thereupon remove the ~~prisoners~~ inmates to the ~~jail~~ detention center from which the removal was had."

Section 17. Section 7-32-2203, MCA, is amended to read:

"7-32-2203. ~~Purpose of county jail~~ Who may be confined in a detention center. ~~The common jails~~ Detention centers are used as follows:

(1) for the detention of persons committed in order to secure their attendance as witnesses in criminal cases;

(2) for the detention of persons charged with crime and committed for trial;

(3) for the confinement of persons committed for contempt or upon civil process or by other authority of law;

(4) for the confinement of persons sentenced to

imprisonment therein upon conviction of a crime~~.~~;

(5) for the confinement of persons sentenced to the state prison, as agreed upon by the state and the governing body of the local government in charge of the detention center."

Section 18. Section 7-32-2204, MCA, is amended to read:

"**7-32-2204. Maintenance of ~~county---jail~~ detention center.** ~~(1)~~ The county commissioners, or the private party when provided in an agreement entered into under 7-32-2201(2), have the duty of building, operating, inspecting, and repairing the ~~jail~~ detention center and must take all necessary precautions against escape, sickness, or infection.

~~(2)--The--county--commissioners--must--inquire-into-the security-of-the-jail-and--the--condition--of--the--prisoners every-3-months.~~"

Section 19. Section 7-32-2205, MCA, is amended to read:

"**7-32-2205. Confinement of ~~prisoners~~ inmates.** The ~~sheriff,--jail~~ detention center administrator~~,-or-private party-jailer-must~~ shall receive all persons committed to ~~jail~~ the detention center by competent authority and provide them with necessary food, clothing, and bedding~~,-for-which sheriffs-or-jail-administrators,-but-not-jailers-operating-a jail-under-an-agreement-provided-for-in-7-32-2201(2),--shall submit--claims-for-the-actual-expenses-incurred-to-the-board of-county-commissioners-for-their-determination-and,--except as--provided--in--7-32-2207,--to--be--paid-out-of-the-county treasury.~~"

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Section 20. Section 7-32-2207, MCA, is amended to read:

"**7-32-2207. Confinement of persons on civil process.** (1) Whenever a person is committed upon process in a civil action or proceeding, except when the state is a party thereto, the ~~sheriff,-jail~~ detention center administrator~~,-or--private-party-jailer~~ is not bound to receive such person unless security is given on the part of the party at whose instance the process is issued, by a deposit of money, to meet the expenses for him of necessary food, clothing, and bedding or to detain such person any longer than these expenses are provided for.

(2) This section does not apply to cases where a party is committed as a punishment for disobedience to the mandates, process, writs, or orders of court."

Section 21. Section 7-32-2208, MCA, is amended to read:

"**7-32-2208. Actual confinement of ~~prisoners~~ inmates required.** ~~A-prisoner~~ An inmate committed to ~~the-county-jail~~ a detention center for trial, for examination, or upon

conviction ~~for a public offense~~ must be actually confined in the ~~jail~~ detention center until he is legally discharged. ~~If he is permitted to go at large out of the jail, except by virtue of a legal order or process, it is an escape.~~"

Section 22. Section 7-32-2211, MCA, is amended to read:

"7-32-2211. Service of papers upon ~~jailer~~ detention center administrator for prisoner. A ~~sheriff or jailer~~ detention center administrator upon whom a paper in a judicial proceeding, directed to ~~a prisoner~~ an inmate in his custody, is served must forthwith deliver it to the ~~prisoner, with a note thereon of the time of its service~~ inmate. ~~For neglect to do so, he is liable to the prisoner for all damages occasioned thereby.~~"

Section 23. Section 7-32-2222, MCA, is amended to read:

"7-32-2222. Health and safety of prisoners. ~~(1) When a county jail or building contiguous to it is on fire and there is reason to believe that the prisoners may be injured or endangered, the sheriff, jail administrator, or private party jailer must remove them to a safe and convenient place and there confine them as long as it may be necessary to avoid the danger.~~

~~(2) When a pestilence or contagious disease breaks out in or near a jail and the physician thereof certifies that it is likely to endanger the health of the prisoners, the district judge may by a written appointment designate a safe and convenient place in the county or the jail in a contiguous county as the place of their confinement. The appointment must be filed in the office of the clerk and authorize the sheriff, jail administrator, or private party jailer to remove the prisoners to the designated place or jail and there confine them until they can be safely returned to the jail from which they were taken.~~

~~(3) If in the opinion of the sheriff, jail administrator, or private party jailer any prisoner, while detained, requires medication, medical services, or hospitalization, the expense of the same shall be borne by the agency or authority at whose instance the prisoner is detained when the agency or authority is not the county wherein the prisoner is being detained. The county attorney shall initiate proceedings to collect any charges arising from such medical services or hospitalization for the prisoner involved if it is determined the prisoner is financially able to pay.~~ Each detention center must comply with state and local fire codes for correctional occupancy and with sanitation, safety, and health codes.

(2) Designated exits must permit prompt evacuation of inmates and detention center staff in an emergency.

(3) When there is good reason to believe that the

inmates may be injured or endangered, the detention center administrator must remove them to a safe and convenient place and confine them there as long as necessary to avoid the danger.

(4) If in the opinion of the detention center administrator an inmate under his jurisdiction requires medication, medical services, or hospitalization, the expense must be borne by the agency or authority at whose instance the inmate was arrested when the arresting agency or authority is not the county in which the inmate is confined, except that if a city or town commits a person to the detention center of the county in which the city or town is located for a reason other than detention pending trial for or detention for service of a sentence for violating an ordinance of that city or town, the expense must be paid by the county. The county attorney shall initiate proceedings to collect from the inmate any charges arising from the medical services or hospitalization for the inmate involved if he determines the inmate is financially able to pay."

Section 24. Section 7-32-2231, MCA, is amended to read:

"**7-32-2231. Purpose to allow private industry involvement.** It is the purpose of 7-32-2231 through 7-32-2234 to allow ~~regional~~ multijurisdictional or ~~single-county-jails~~ single-jurisdiction detention centers to

be built by private industry and leased **back** to the participating ~~county--or--counties~~ local government or governments for operation by the **county** local government, collectively by participating ~~counties~~ local governments, or by a private entity with the concurrence of the ~~sheriff--or sheriffs~~ local governments involved."

Section 25. Section 7-32-2232, MCA, is amended to read:

"**7-32-2232. ~~County---jails~~ Detention centers -- contracts with private parties.** (1) The term of an agreement under 7-32-2201 with a private party may not exceed 3 years.

(2) The agreement must include:

(a) detailed standards for the operation of the ~~jail~~ detention center and the incarceration of ~~prisoners~~ inmates;

(b) a performance bond from the private party acceptable to the ~~county~~ local government;

(c) a promise from the private party to indemnify the ~~county~~ local government for any damages for which the ~~county~~ local government is found liable as a result of the operation of the ~~jail~~ detention center;

(d) a provision that the private party must purchase liability insurance in an amount acceptable to the ~~county~~ local government;

(e) minimum standards for the training of ~~jailers~~ detention center staff and a provision that the private

party will ensure such training; ~~and~~

(f) a provision that the ~~county~~ local government may immediately terminate the contract for good cause~~.~~; and

(g) a provision that the detention center will meet the standards of the detention center standards commission.

(3) The provisions of Title 7 relating to bids for ~~county~~ local government contracts and purchases do not apply to a contract entered into under 7-32-2201 and this section."

Section 26. Section 7-32-2233, MCA, is amended to read:

"**7-32-2233. Requests for contract proposals.** (1) A ~~county~~ local government seeking to enter into a contract under 7-32-2201 and 7-32-2232 may publish a request for proposals. The request for proposals must be published in a newspaper of general circulation in the county once a week for 3 successive weeks and must include information concerning the type of ~~jail~~ detention center services required.

(2) Requests for proposals must be sent to persons who have previously requested that their names be placed on a list of persons providing ~~jail~~ detention center services. The Montana board of crime control shall maintain a list of persons providing ~~jail~~ detention center services and furnish the list to a ~~county~~ local government upon request.

(3) In selecting a proposal and awarding a contract, a ~~county~~ local government need not accept the proposal with the lowest cost.

(4) The ~~county~~ local government must base its selection on demonstrated competence, knowledge and qualifications, the reasonableness of the services proposed, and the reasonableness of the proposed contract price for the ~~jail~~ detention center services.

(5) A copy of all proposals must be kept available for public inspection in the office of the county clerk and recorder.

(6) The ~~county~~ local government must give specific reasons for its selection of a proposal. The reasons must be recorded in the minutes of the governing body of the ~~county~~ local government."

Section 27. Section 7-32-2234, MCA, is amended to read:

"**7-32-2234. Powers of ~~jail~~ detention center administrators ~~and private party jailers~~.** A ~~jail~~ detention center administrator ~~or a private party acting as a jailer under an agreement, as provided for in 7-32-2201(2),~~ is responsible for the immediate management and control of the ~~jail~~ detention center subject to general policies and programs established pursuant to the agreement provided for in 7-32-2201(2) and any applicable interlocal agreement. The

powers of such an administrator and ~~corrections~~ detention center personnel employed under his authority include control over ~~prisoners~~ inmates:

(1) within the confines and grounds of the ~~jail~~ detention center; and

(2) outside the ~~jail~~ detention center confines and grounds while transporting any ~~prisoner~~ inmate or in the hot pursuit or apprehension of any escapee."

Section 28. Section 7-32-4201, MCA, is amended to read:

"**7-32-4201. Municipal ~~jails~~ detention centers authorized.** The city or town council has power to establish and maintain a ~~jail~~ detention center, as defined in [section 1], for the confinement of persons convicted of violating the ordinances of the city or town, and to make rules for the government of the same, ~~and to cause the prisoners to work on streets or elsewhere within 3 miles of the city~~."

NEW SECTION. **Section 29.** **Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 7, chapter 32, parts 21 and 22, and the provisions of Title 7, chapter 32, parts 21 and 22, apply to [section 1].

NEW SECTION. **Section 30.** **Coordination instruction.** If __ Bill No. __ [LC 20] is not passed and approved, the amendment in [section 25 of this act] that inserts

7-32-2232(2)(g) is void.

NEW SECTION. **Section 31.** **Repealer.** Sections 7-32-2206, 7-32-2209, 7-32-2210, 7-32-2212, 7-32-2213, 7-32-2221, 7-32-2223, 7-32-4202, and 7-32-4203, MCA, are repealed.

-End-

HEARING ON SENATE BILL 452

Presentation and Opening Statement by Sponsor:
Senator Del Gage, presented SB 452. He explained the bill as being developed by the board of crime control during the interim concerning jail recodification. He pointed out the problem with the statute of incarceration and of mandating regional jails. He said regional centers instead of regional jails were being looked at in order to keep the state from having too many employees scattered throughout the state. This would grant the opportunity of centering related state agencies in those regional centers. The bill would address the problems of federal mandates, he said.

List of Testifying Proponents and What Group they Represent:

Don Crabbe, representing the Board of Crime Control
Chuck O'Reilly, Sheriff-Lewis & Clark County, representing the Montana Sheriff and Peace Officers

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Don Crabbe from the Board of Crime Control testified in support of the bill. He explained the background of the bill and the intent of the legislation. He described the 16 member committee that worked on the bill for two years, composed of sheriffs, jail administrators, county, city and state officials. He said the purpose of the legislation is to bring jail law and jail administration into the twentieth century. He said the jail recodification committee made an effort to look at all of the sections of the current law and broke them into current conditions, in terms of getting rid of work houses and that type of thing. He noted in the legislation that jail administrators and detention officers liked to be called something other than a jailer. He pointed out a terminology change contained in the legislation.

Mr. Crabbe pointed out the new provisions in the bill. One was the method of payment for housing of prisoners in jails which would place everyone into a common payment schedule with a negotiated rate between various governmental entities. There are also parts of this legislation that deal specifically with allowing state prison inmates to be

housed in local jails under a contract basis. Presently, there is no statutory authority for that and this bill would provide that authority. Additional flexibility written in the bill would allow regionalization of jails. He pointed out that the with the economy at the county and city level the Jail Recodification Committee felt it was very important that the counties be given greater flexibility in terms of combining jail facilities to be used by multijurisdictional entities.

Chuck O'Reilly, Sheriff of Lewis and Clark County, spoke in favor of the bill. He represented the Montana Sheriffs and Peace Officers Association who supported the bill. He asked Senator Gage to amend page 4, line 19 to insert "and with the consent of the sheriff". He said this was current law. He explained that this insures a working relationship between the judge and the sheriff so a lot of prisoners don't get assigned to this particular type of sentence. He offered a second amendment on page 17, line 4, concerning prisoners from Montana State Prison. He said this is currently done even though there is nothing in the law that specifically allows it. It should be checked with the Sheriff or Jail Administrator so he asked that they strike on line 3, "government" and on line 4 and insert "administrator". He said the reason that prisoners are held from Montana State Prison are generally emergency type situations.

John Connor testified in support of the bill. He said he was a member of the commission that worked on this issue. He emphasized that this bill was a cooperative effort of everybody involved with law enforcement and the administration of jails including the American Civil Liberties Union that had a member on the committee. He urged support of the bill.

Questions From Committee Members:
Senator Beck asked Sheriff O'Reilly about changes in the bill. Sheriff O'Reilly said that under the bill there was no change except in one area. He explained that currently they can charge the highway patrol $20 a day and other state agencies the cost of incarceration. They cannot charge cities or towns unless the sentence is charged with a state crime then the county has to pick up all charges.

Senator Jenkins discussed the new county jail in Cascade County and whether regional centers or jails would affect that. Don Crabbe replied that the bill does not specify that without the concurrence of all governing units involved

will there be a regional jail. Cascade County designated their facility a regional jail center, without talking to anyone else, as a planning scheme on their part, he stated. An agreement between all of the counties and cities involved in the process of regionalization will still be necessary.

Senator Mazurek asked if the amendment offered by Sheriff O'Reilly gave the sheriff the ability to veto the judges order concerning work release. Sheriff O'Reilly said that it forces the judge to have the sheriffs concurrence. Otherwise the burden is placed on the jail administrator. He pointed out that prisoners assigned to work release programs, the book keeping and keeping track of the prisoners is a huge job and should be controlled.

John Connor explained to the committee that the statutes pertaining to work releases are contained in a different area and were not proposing any changes to the work release statutes.

Senator Jenkins asked if a prisoner was confined at a county jail and the judge had ordered him to be on work release and he committed a terrible crime. Who would be liable the judge, the sheriff's department or county jail because that prisoner was loose. John Connor replied that in terms of his current understanding of the liability issue that the judge would not be liable because he has judicial immunity and the local governments would not be liable because that judicial immunity would extend to the local government units.

Closing by Sponsor:
Senator Gage pointed out that the bill was an improvement in the current situation and asked that the committee do pass SB 452.

DISPOSITION OF SENATE BILL 452

Discussion:

Amendments and Votes:
Senator Brown moved the O'Reilly amendment on page 4, line 19, following: "order", insert "and with the consent of the sheriff" and on page 17, lines 3 and 4, following: "and the" on line 3, strike: remainder of line 3 through government on line 4 and insert "administrator". The MOTION PASSED UNANIMOUSLY.

Recommendation and Vote: Senator Pinsoneault MOVED that Senate Bill 452 DO PASS AS AMENDED. The MOTION CARRIED UNANIMOUSLY.

HEARING ON SENATE BILL 431

Presentation and Opening Statement by Sponsor:
Senator Del Gage, Senate District 5, presented SB 431. He explained that the bill was at the request of the Department of Justice.

List of Testifying Proponents and What Group they Represent:

Marc Racicot, Attorney General
John Willems, Dept. of Commerce, Video Gaming Control bureau chief
Jim Durkin, Dir., Gaming Industry Association
Ed Kennedy, Mayor of Kalispell, State Gaming Advisory Council
Mignon Waterman, Montana Association of Churches
Phil Strope, Montana Tavern Association
Al Donahue, Gaming Advisory Council
Andy Poole, Dept. of Commerce
Pious Ehli, Big B Bingo Parlors, Billings
Tex Pate, Montana Auction Association
Terry Will, owner of a bingo parlor

List of Testifying Opponents and What Group They Represent:
Lynn Seelye, Attorney and Sailboat Bingo Parlor, Great Falls
Randy Reger, Gaming Industry Association
Sid Smith, Bingo Palace, Helena

Testimony:
Marc Racicot explained the bill as a result of an advisory council that was appointed by Governor Schwinden to study the issue of Gambling in the state of Montana. He explained that in 1972 there was no gambling by the Constitution. Gambling has grown since that time in terms of the type of gambling which are legal but a form of regulation and kind of revenue that is generated. The 1972 Constitution states that all gambling in Montana is illegal unless specifically authorized by the Legislature. The Legislature has authorized live bingo, live keno, live poker, and other live card games. The Legislature has also authorized the state

ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989 Date 2-17-8

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL	✓		

Each day attach to minutes.

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. SB425 DATE Feb. 17, 1989

SPONSOR

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
MARK Simonich	P.O. Box 1429 Columbia Falls	X	
Don Judge	MT STATE AFL-CIO	~~SB425~~	SB425
Sue Weingartner	MT Defense Trial Lawyers		SB425
Mignon Waterman	Mt. Assoc. of Churches	SB425 X	
Ben Havdahl	MT. Motor Carriers Assn	SB425	
Mike Sherwood	MTLA		SB425
Charles R. Brooks	Montana Nat'l Bank Assoc.	SB425	
Chuck O'Reilly	Att. Gen. Office	SB452	
Don Crabbe	Board of Crime Control	SB452	
Dan Allen	MT. Wood Pd. Assn	SB425	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date 2-17-89 Senate Bill No. 452 Time

NAME	YES	NO
SEN. BISHOP	✓	
SEN. BECK	✓	
SEN. BROWN	✓	
SEN. HALLIGAN	✓	
SEN. HARP	✓	
SEN. JENKINS	✓	
SEN. MAZUREK	✓	
SEN PINSONEAULT	✓	
SEN.YELLOWTAIL	✓	
SEN. CRIPPEN	✓	

Rosemary Jacoby
Secretary

Sen. Bruce Crippen
Chairman

Motion: P. Moved DPA— UNAN

SF-3 (Rev. 1987)

Don Judge stated that he agree with Eric Feaver's testimony. This removes the process one further step away from the citizens involvement. He opposes SB 396.

Kim Wilson stated that they have the same concerns as SB 397. Existing rules which have gone through an orderly and practical process that has included public input and the opinions of experts in each field are potentially going to be subverted by the language in this bill which allows a Governor to essentially do what he wishes in the form of rule making.

Chris Deveny stated they oppose SB 396 (SEE EXHIBIT 6).

C.B. Pearson stated they also oppose SB 396.

Virginia Jellison stated that the citizens provide valuable input into the process and they can also advise the administrative branch on the affect a proposed rule will have on the people being served.

Brant Quick stated they oppose SB 396.

Questions From Committee Members: Rep. Brown asked Sen. Meyer in the existing administrative procedures act, there is a biennial review of agencies where each agency is required to review its rules biennially to determine if any rules should be adopted or existing rules should be modified or repealed and that is suppose to be recommended back to the legislature. That is already on the statute, how is this going to change any more than what is already there and what the Governor can do? Sen. Meyer stated that he doesn't think this rule has ever been used.

Closing by Sponsor: Sen. Meyer stated that this is the first step in looking at the administrative rules and trying to clean them up. All the fears that were mentioned, there will be public input in this with a five member board to come back to the Governor and say we do need changes.

HEARING ON SENATE BILL 452

Presentation and Opening Statement by Sponsor: Sen. Gage opened the hearing on SB 452.

Testifying Proponents and Who They Represent:

Gordon Morris, Montana Association of Counties
Don Crabbe, Board of Crime Control
Mike Schaffer, Sheriff of Yellowstone County/Montana Sheriffs and Peace Officers Association
Alec Hansen, Montana League of Cities and Counties
John Connor, Department of Justice
Wally Jewell, Montana Magistrates Association

Proponent Testimony:

Gordon Morris stated that they support SB 452. He recommends that the committee pass SB 452 and then work with the counties in the coming interim to find a mechanism to fund county jails.

Don Crabbe stated they support SB 452.

Mike Schaffer stated they also support SB 452.

Alec Hansen stated they support SB 452. The most important feature of this bill is the authority that it includes to provide regional jail facilities.

John Connor stated they support SB 452.

Wally Jewell stated they also support SB 452.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members:

None.

Closing by Sponsor: Sen. Gage closed on SB 452.

DISPOSITION OF SB 452

Motion: Rep. Daily moved SB 452 BE CONCURRED IN, seconded by Rep. Eudaily.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: Motion for SB 452 BE CONCURRED IN CARRIED unanimously.

HEARING ON SENATE BILL 442

Presentation and Opening Statement by Sponsor:

Rep. Daily opened the hearing on SB 442 on behalf of Sen. Lynch.

DAILY ROLL CALL

JUDICIARY COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date March 22, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN	X		
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY	X		
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

March 22, 1989

Mr. Speaker: We, the committee on Judiciary report that SENATE BILL 452 (third reading copy -- blue) be concurred in .

Signed: _____
Dave Brown, Chairman

[REP. _____ WILL CARRY THIS BILL ON THE HOUSE FLOOR]

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. SB 452 DATE MARCH 22, 1989

SPONSOR SEN. GAGE

NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
John Connor	Dept of Justice - Mt. City Atty Assn Helena MT	✓	
Don Crabbe	MBCC Helena	✓	
Tom Hannon	mt Sheriffs & Peace Offs.	✓	
Mike Sehestedt	Gallatin Co. S.O.	✓	
WALLY JEWELL	MT MAGIS ASSOC	X	
Jordan Morris	MACo	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.